

# SENATOR SAM ERVIN SAYS



Last week I introduced a bill entitled the Newsman's Privilege Act of 1973, which is designed to protect the free flow of information to the public.

This new bill represents my third attempt at drafting legislation which will accommodate both the interest of society in law enforcement, and the interest of society in preserving a free flow of information to the public. I have been attempting to draft a bill which would strike this balance. As everyone who has attempted the task knows, this is no easy

exercise. While I am certain that this bill can be improved, in my judgement it strikes a reasonable balance between necessary, if at times, competing, objectives.

The bill provides qualified protection for a newsman's source and for his unpublished materials. A newsman, under the bill, is entitled to refuse to reveal to a governmental body the name of his source of information if he gave a contemporaneous assurance to the source, either expressed or implied, that the identity of the source would not be disclosed. Furthermore, the information must have been obtained in the course of the newsman's occupation. Unpublished information is also protected from disclosure if it was gathered in the course of the newsman's occupation.

It is important to note that, despite these provisions, the newsman is not excused from testifying to the identity of any person who commits a crime in his presence. This provides a clear standard which puts both newsmen and sources on notice that where the newsman has viewed a criminal act, whether or not as a pledge of confidentiality, he may later be compelled to identify the perpetrator of that act. This provision provides a small qualification to the general privilege conferred by the bill. But it is a necessary and reasonable exception. No newsman would take lightly concealing a crime from public authorities, and no newsman should have a right to keep this information from the police. Yet to conform to the exception will require little imposition on the part of the newsman. He need only tell his source; "the law will protect against my having to disclose your name. But I cannot hide your identity if you are committing a crime." These terms are reasonable to any man, and will not interfere with the normal and necessary reporting and informing function of the journalist.

The provisions of this new bill would apply to both federal and state governments. This represents a departure from my earlier bills which applied only to federal jurisdictions. I have been convinced during the course of the hearings on this



James E. Pike, C. S., of Wilmette, Ill., who will lecture at New Bern's First Church of Christ, Scientist, on March 30, has been in the public practice of Christian Science since 1956. During World War II, while in military service, he was awarded the Bronze Star for gallantry in action.

subject by the Subcommittee on Constitutional Rights that inclusion of the states within the power of Congress to regulate interstate commerce and, moreover, is desirable. A shield law which only applied to the federal courts would not fulfill its objective of protecting the free flow of information. If a uniform shield law were not in effect, neither sources nor newsmen could be assured that they would not be subpoenaed before state tribunal where the testimonial privilege was different or did not apply. Under my bill, the states would be free to provide greater protection for newsmen if they so desire. My bill only sets minimum standards.

This legislation represents an attempt to reconcile two sometimes competing interests of society: the preservation of a free flow of information to the public, and the administration of justice. Giving the newsman the right to withhold the identity of all sources of information, however obtained, would seem to weigh the balance too strongly in favor of the newsman and carry the potential for abuse. There is no need to allow the newsman to

while not performing his job. Similarly, the interest of society in identifying and punishing violators of its law is too vital to allow newsmen to testify about a crime committed in their presence.

This bill takes a balanced approach to resolve this issue. Its provisions are simple and direct. Under it, newsmen and their sources obtain protection which they can rely upon, and law enforcement officials are not unduly restrained.

The age of chivalry has gone, and one of calculators and economists has succeeded.—Edmund Burke.

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